As to the second argument, their Lordships would adopt the observations of the learned Chief Justice quoted above. The course adopted by Neal J., considered *in vacuo*, was plainly undesirable. But the circumstances were very unusual. A rehearing of oral evidence would have entailed even further delay and great expense. Some of the many witnesses were several hundreds of miles away. The learned Judge had before him a full note of the sworn evidence of witnesses who had been examined and cross-examined. It was a very insecure foundation for disputed questions of fact. Nevertheless it was the material on which the parties, in the unhappy state of affairs, asked to have their case decided, and its inadequacy affected each party alike. The defendant sought the hazard and, having lost, complains of it. Their Lordships cannot now regard as a denial of justice the procedure which the defendant himself (together with the plaintiffs) requested and of which he has made no complaint in the Courts below.

The defendant has further contended that the evidence did not support the conclusions of Neal J. and the Court of Appeal, and in particular that the plaintiffs failed to satisfy the onus of proof laid upon them by section 110 of the Evidence Ordinance which provides that "when the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner". The defendant relies on the judgment of Ong J. who after a careful analysis of the evidence, thought that the statutory onus was not discharged and gave a dissenting judgment in the Court of Appeal. Their Lordships however find no justification for investigating the question of fact. The principles applied by the Board where there are concurrent findings of fact have been clearly enunciated in *Srimati Bibhabati Devi* v. *Kumar Ramendra Narayan Roy & Ors.* (4). The fact that there was a dissentient in the Court of Appeal, does not affect the matter (*ibidem*). Those principles are not inflexible and their Lordships' Board may in special circumstances vary their application in some degree. In the present case, however, there are no circumstances that justify any departure from their strict application.

Their Lordships will therefore report to the Head of the Federation of Malaya that in their opinion the appeal should be dismissed.

Appeal dismissed.

Solicitors: *Bulcraig & Davis.*

T.U.V. v. COMPTROLLER OF INCOME TAX

[A. C. J. (Rose C.J.) November 29, 1962]

[Singapore — District Court Appeal No. 34 of 1960]

Income Tax — Returns — Taxpayer not delivering — Comptroller making assessment under s.72(3), Income Tax Ordinance — Taxpayer not practising any trade or profession — Profit from successful bets — Inference that taxpayer was paid runner or agent for bookmakers — Income Tax Ordinance (Cap. 166), ss.72(2)(b), (3) and 80(3).

This was an appeal against a decision from the Board of Review, holding that the appellant had failed to satisfy the onus which was upon him of proving that certain assessments made by the Comptroller under section 72(3) of the Income Tax Ordinance were excessive. The appellant had never previously made a return and had never practised any trade or profession which could have given rise to a chargeable income. He had no house of his own but lived with his wife in his parents-in-law's house. Further there was no evidence of any extravagance in his way of life. It was common ground that he was in the habit of placing bets with bookmakers on behalf of two wealthy men and it was his contention that during the years in question he persistently backed horses and from time to time was successful in his bets.

It was suggested for the Comptroller that the reasonable inference from these facts was that the appellant was a runner or agent for bookmakers and that therefore it must be presumed that he was obtaining some payment from the bookmakers with whom he placed the bets.

Held: the appellant had discharged the onus which was upon him, in that, there was no sufficient evidence that in the relevant years he was in receipt of a chargeable income.

DISTRICT COURT APPEAL.

Denis Murphy for the appellant.

R. M. Berriman for the respondent.

Cur. Adv. Vult.

Rose C.J.: This is an appeal against a decision from the Board of Review, holding that the appellant had failed to satisfy the onus which was upon him of proving that certain assessments made by the Comptroller of Income Tax were excessive.

The assessments in question were made under section 72(3) of the Income Tax Ordinance (Cap. 166) whereby the Comptroller is empowered where the person has not delivered a return, to determine the amount of chargeable income of such person and make assessments accordingly.

The great majority of such cases relate to persons who have an admitted trade or profession and have either failed to make a return at all, or have made a return which the Comptroller regards as disclosing too low an income, a matter which can be dealt with under section 72(2)(b) of the Ordinance. In such cases the taxpayer, if dissatisfied with the assessment, must adduce figures and evidence in support of his position and in the event of his failing to discharge the onus which is placed upon him by section 80(3) of the Ordinance, the Comptroller's assessment is affirmed.

The present case is unusual in that the appellant had never previously made a return and had never, according to his own evidence,

practised any trade or profession which could have given rise to a chargeable income.

The appellant has no house of his own but lives with his wife in the house of his parents-in-law. Nor is there evidence of any special extravagance in his way of life. Incidentally, Mr. Berriman conceded in the course of the argument that there was no material which could justify the finding of the Board of Review that the appellant had himself admitted that he had made a very substantial income from horse-racing during the relevant years.

It is common ground that he was in the habit of placing bets with bookmakers on behalf of two wealthy men, a Mr. W. who has now left Singapore and a Mr. S. who gave evidence in the proceedings before the Board of Review.

The years in question are 1957, 1958 and 1959 and it is the appellant's contention that during those years he persistently backed horses and from time to time was successful in his bets. It is conceded by the Comptroller that any such profits from successful bets are not taxable; but what is suggested is that the reasonable inference from the picture as a whole is that the appellant, while placing bets for these two gentlemen and, indeed, for some other of his friends, was in fact acting as a runner or agent for bookmakers and that it must therefore be presumed that he received some remuneration from them for his services.

At page 8 of the record the appellant stated in answer to a question by the Board, "I have made a living for four years by backing horses."

There is no evidence on the record that the appellant was a runner or agent of any bookmaker, the only passage which could possibly lend any support to such a conclusion is at page 13 where Mr. S. said in answer to a question by the Board: "I do not know what the taxpayer was getting out of this. He was putting big business in the way of bookmakers."

Just previously to this question by the Board Mr. S. had stated: "I do not say taxpayer is employed by a bookmaker. He did not take bets or place bets for others."

The appellant, for his part, said that the benefit that he derived from his transactions on behalf of Mr. W. and Mr. S. was that he got valuable information.

Mr. Berriman, in his able argument, suggested that I should approach this matter by looking at the inherent probabilities; and he suggested that the reasonable inference was that the appellant was obtaining some payment from the bookmakers with whom he placed the bets. And that is the basis upon which Mr. Berriman justifies the Comptroller's assessments.

The matter is not free from difficulty but I find myself unable to accept that inference from the facts as deposed to in the record. In considering topics of this nature it is impossible to exclude from one's mind general knowledge as to racing in Singapore which has come to one's personal notice. During the last four years I have myself, in common with many of my fellow citizens, made a number of unsuccessful wagers upon the result of horse races. Moreover, I have actually been present at the scene to watch my chosen horses lose. Sometimes one's horse runs well and is narrowly defeated; on other occasions one's horse runs badly and the conclusion is sometimes forced upon one that not only has one's horse not won but that the jockey has made no very strenuous efforts to ensure that it should win. In other words, the horse was not trying. Thus one's money was in fact lost even before the field left the starting gate.

It is to avoid the latter type of disappointment that information of the kind that permanent backers like Mr. W. and Mr. S. are able to provide is valuable. The fact that they are themselves backing a particular horse does not, of course, guarantee that that horse will win; but it does at least render it probable that the horse will try. That is, in my opinion, a type of information that any backer of horses would find it most useful to possess. And that in itself would be sufficient reward for the services rendered to the backers and incidentally, of course, to the bookmakers.

An analogy occurs to me in the world of finance. Suppose a leading industrialist, with irons in many fires, invites a person to place his orders on the Stock Exchange with a number of brokers. The person so chosen would have the inestimable benefit of getting first class financial advice free of charge, in exchange for a relatively trifling service, that of telephoning the brokers. In such a case, in the absence of any positive evidence and in the face of the taxpayer's denial, it would, I suggest, be irrational to conclude that he was receiving a commission from the brokers for the introduction of the business.

There has been no suggestion throughout this case — and indeed it could not reasonably be so — that either Mr. W. or Mr. S. themselves paid any commission to the appellant.

No doubt there are many runners and agents whom the bookmakers employ either on a salary or on a percentage basis; but there is no evidence in the present matter that the appellant was so employed. He himself says he was not and there is, in my opinion, nothing in the circumstances disclosed in the record to justify one in drawing the conclusion that he is or was so employed.

It is true, as is pointed out by the Chairman of the Board of Review, that the appellant called no bookmakers to affirm the negative and even declined to give their names. Having regard, however, to the fact that bookmakers in this country are not legalised, I do not consider that any adverse inference should be drawn.

It is indeed suggested — and it may well be so — that Mr. W. and Mr. S. were not the only persons for whom the appellant placed bets with

bookmakers. There may well have been others and it may well be, as the appellant I think admitted in cross-examination, that W., S. and other persons occasionally visited the appellant's house to discuss racing matters. This, however, does not to my mind justify the inference that the appellant was a runner or agent of any bookmaker.

After some hesitation, I have come to the conclusion that in the present case, which as I have already said is an exceptional one, the appellant has discharged the onus which was upon him, in that, in my opinion, there is no sufficient evidence that in the relevant years he was in receipt of a chargeable income.

For these reasons I am of opinion that the appeal succeeds and must be allowed with costs here and below; the decision of the Board of Review is set aside and the relevant assessments quashed.

Appeal allowed.

Solicitors: *Murphy & Dunbar.*

LOW SOON KEE & CO. v. KEW MENG & CO.

[A. C. J. (Wee Chong Jin J.) December 10, 1962]

[Singapore — District Court Appeal No. 16 of 1962]

Landlord and Tenant — Controlled and non-controlled premises subject matter of single letting — Expiry of common law tenancy — Holding over as statutory tenant — Meaning of "premises" — Control of Rent Ordinance (Cap. 242), s.2.

This was an appeal from the decision of the Civil District Judge granting possession of a piece of vacant land to the respondents, the plaintiffs in the action, on the ground that the vacant land in question was not "premises" within the meaning of the Control of Rent Ordinance. The vacant land in question originally formed part of a larger piece of vacant land. On part of this larger piece of vacant land were erected, in or about 1942, three shophouses. The unbuilt on portion is the subject matter of this action and is situated immediately behind the three shophouses and is separated from them by a wall, but with access to it from these three shophouses. In 1948 the plaintiffs became tenants of one of the shophouses and 3 or 4 months thereafter they also became tenants of the same landlord of the vacant land in question. On June 1, 1956 by a written agreement a portion of their rented shophouse and the vacant land in question were sub-let by the plaintiffs to the defendants for a period ending on May 1, 1961 at a rent of $65 per month. The tenancy having expired by effluxion of time, the question for decision was whether the defendants were entitled to hold over as statutory tenants of the portion of the shophouse together with the vacant land or whether they were only entitled to hold over as statutory tenants the portion of the shophouse but not the vacant land.

Held: where, as in the present case, there has been a single letting the subject matter of which comprises part controlled premises and part non-controlled premises and the facts, are such that enjoyment of one part is dependent upon occupation of the whole, a tenant under such a tenancy upon the expiration of his common law tenancy is entitled to hold over as statutory tenant of the whole of the subject matter of the original tenancy. It would be wrong in principle in such a case to create two separate tenancies out of a single letting as this could never have been in the contemplation of the parties.

DISTRICT COURT APPEAL.

E. W. Barker for the appellants (defendants).

N. A. Christopher for the respondents (plaintiffs).

Wee Chong Jin J.: This is an appeal from a decision of the learned Civil District Judge granting possession of a piece of vacant land to the respondents, the plaintiffs in the action, on the ground that the vacant land in question was not "premises" within the meaning of the Control of Rent Ordinance.

The facts, except on one matter which I will later refer to, are not in dispute. The vacant land in question originally formed part of a larger piece of vacant land. On part of this larger piece of vacant land were erected, in or about 1942, three shophouses numbered respectively 441-N, 441-O and 441-P Upper Serangoon Road. The unbuilt on portion is the subject matter of this present action and is situated immediately behind the three shophouses and is separated from them by a wall, but with access to it from these three shophouses.

In 1948 the plaintiffs became tenants of No. 441-O Upper Serangoon Road and 3 or 4 months thereafter they also became tenants of the same landlord of the vacant land in question. On the 1st of June, 1956 by an agreement in writing a portion of No. 441-O Upper Serangoon Road and the vacant land in question were sub-let by the plaintiffs to the defendants for a period ending on the 1st May, 1961 at a rent of $65 per month.

On these facts it is clear and there appears to be no difference of opinion between counsel for both parties that at the date of the subletting the portion of house No. 441-O sub-let by the plaintiffs to the defendants was controlled premises if sub-let separately, and the vacant land was not controlled premises if sub-let separately. On the pleadings and on the evidence before the learned Judge it is, in my opinion, clear however that the portion of house No. 441-O together with the vacant land in question were the subject matter of one single indivisible tenancy, notwithstanding that a partner of the plaintiffs in the course of re-examination stated that there was an understanding that the rent for the portion of 441-O was to be $20 and the rent for the vacant land was to be $45 per month.

The question then remains, the tenancy having expired by effluxion of time, whether the defendants were entitled to hold over as statutory tenants of the portion of the house together with the vacant land or whether they were only entitled to hold over as statutory tenants the portion of No. 441-O but not the vacant land. The question to be decided appears to be a novel one. Can it be said, as counsel for the plaintiffs so contends, in a case where the subject matter of a single letting comprises premises which are controlled as to one part and non-controlled as to the another part, that a tenant becomes a pro-